

AGREEMENT BETWEEN THE  
DEFENSE LOGISTICS AGENCY  
AND  
THE STATE OF TENNESSEE

**PURPOSE:**

This Memorandum of Agreement (MOA) is entered into between the Defense Logistics Agency (hereinafter "DLA"), and the State of Tennessee, to set forth the terms and conditions which will be binding on the parties with respect to excess Department of Defense (DoD) personal property which is transferred pursuant to 10 U.S.C. §2576a, and to promote the efficient and expeditious transfer of the property.

**AUTHORITY:**

The Secretary of Defense is authorized by 10 USC §2576a to transfer to Federal and State Agencies personal property that is excess to the needs of the DoD and that the Secretary determines is suitable to be used by such agencies in law enforcement activities, including counter-drug and counter-terrorism activities, under such terms prescribed by the Secretary. The authorities granted to the Secretary of Defense have been delegated to DLA. In determining whether property is suitable for use by agencies in law enforcement activities, DLA defines law enforcement activities as activities performed by government agencies whose primary function is the enforcement of applicable Federal, State and local laws and whose compensated law enforcement officers have powers of arrest and apprehension.

**TERMS AND CONDITIONS:**

The DoD, through DLA, has final authority to determine the type, quantity, and location of excess personal property suitable for use in law enforcement activities, if any, which will be transferred to the State. This agreement creates no entitlement in the State to receive DoD excess personal property. Property available under this agreement is for the use of authorized program participants; not for speculative/possible future use. Unless otherwise provided, property may not be obtained for the purpose of sale, lease, rent, exchange, barter, to secure a loan or to otherwise supplement normal law enforcement agency (LEA) budgets. All requests for property must be based on bona fide law enforcement requirements. The requisitioning of condition code "A" property for the purpose of cannibalization is not authorized. Any repair, maintenance, insurance or other expenses associated with these items is the sole responsibility of the State/LEA.

The State agrees to establish and submit to the Headquarters DLA a plan of operation developed in accordance with Federal and State law and conforming to the provisions of this

MOA. This plan must detail organizational and operational authority including staffing and facilities. It must also address procedures for making determinations of eligibility, allocation and equitable distribution of material, compliance and reutilization reviews, and procedures with respect to accountability and property disposal. Property obtained under this MOA must be placed into use within one year of receipt and utilized for a minimum of one year, unless the condition of the property renders it unusable. These elements are considered the minimum essential ingredients for establishment of a satisfactory business agreement between the State and DoD. The State's plan of operation is subject to Federal review.

By signing this agreement or accepting excess property under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies prohibiting discrimination:

- a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.
- b. On the basis of age, in the Age Discrimination Act of 1975 (42 USC 6101, et seq) as implemented by Department of Health and Human Services regulations at 45 CFR part 90.
- c. On the basis of handicap, in: Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

Aircraft (fixed-wing and rotary), Flight Safety Critical Aircraft Parts (FSCAP), and Munitions List Items (MLI) requiring demilitarization may be transferred to the State for its use in law enforcement activities. The State's operational plan must ensure that all LEAs and all subsequent users are aware of and agree to provide all required controls in accordance with applicable laws and regulations for these items. Additionally, the following conditions apply:

The LEAs that provide evidence to DLA that aircraft are maintained in accordance with applicable airworthiness standards and procedures for maintenance and repair will be allowed to permanently retain the aircraft after a period of five years.

Through the State Coordinator, LEAs are permitted to exchange aircraft and FSCAP with other authorized LEAs, provided the aircraft and components are maintained in accordance with applicable airworthiness standards and procedures for maintenance and repair and provided further that the LEAs perpetuate repair and maintenance documentation. LEAs are permitted to retain reasonable quantities of aircraft components for future use.

The State Coordinator/LEAs may dispose of Strategic List/MLI only if appropriate procedures and controls are incorporated into the State established plan of operation. At a minimum these items require the U.S. Department of State or Commerce license for export. The State's operation plan must ensure that all LEAs and all subsequent users are aware of and agree to provide appropriate controls for these items. In lieu of such procedures, and with prior coordination with the LESO, the State Coordinator/LEAs have the option of returning such items to the closest DRMO or

transferring to other authorized LEAs when no longer required for law enforcement use.

The Governor-appointed State Coordinator identified below represents that he/she is authorized to enter into this agreement on behalf of the State. This individual will act as a sponsor for local LEAs that desire excess personal property, coordinating their non-operational requests. The State Coordinator will validate that the property being requested will be used for law enforcement activities. If requested by the LESO, the State Coordinator will furnish detailed justification for a specific request. Title is granted to the State or designee. Costs of shipping or repossession of property by the U.S. Government will be borne by the State.

To the extent permitted by law, the State Coordinator/LEA shall indemnify and hold the U.S. Government harmless from any and all suits, actions, demands or claims of any nature arising out of the use of the property. The State agrees to maintain or assure that the LEA maintains adequate insurance to cover damages or injuries to persons or property relating to the use of the property. Self-insurance coverage is considered acceptable. The DoD assumes no liability for damages or injuries to any person or property arising from the use of the property.

#### **THE DEFENSE LOGISTICS AGENCY SHALL:**

- a. Receive and approve applications for participation in the program that have been certified by the State Coordinator as having a law enforcement mission.
- b. Encourage and assist in the use of electronic screening capability to locate the property.
- c. Upon receipt of a properly executed requisition, issue excess property, free of charge, to the State Coordinator or designee for further transfer to authorized LEAs.
- d. Identify Munitions and Strategic List Items (MLI/SLI), Flight Safety Critical Aircraft Parts (FSCAP) and/or any other property requiring special controls and/or return to DoD custody.
- e. Provide the State Coordinator/LEAs with the available flight historical records and related documentation on FSCAP components. This documentation will be available for inspection by LEAs prior to transfer. The documentation will be sufficient to be accepted by an FAA authorized repair facility for evaluation and possible documentation for use on an aircraft. DoD makes no representation as to the property's conformance with FAA requirements. The LEA must subject the assets to safety inspection, repair, and/or overhaul by a competent manufacturer or other entity such as those certified by the FAA prior to placing into use. The property that is provided to the State Coordinator/LEA may not meet FAA design standards, and/or may have been operated outside the limitations required by the Federal Aviation Regulations.

- f. Assure that to greatest extent practical, preference is given to those applications indicating that the transferred property will be used in the counter-drug or counter-terrorism activities of the recipient agency.
- g. Conduct periodic program compliance visits.
- h. If a State Coordinator or LEA materially fails to comply with any term of the agreement, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, the Memorandum of Agreement, DLA may take one or more of the following actions, as appropriate in the circumstances:
  - (1) Temporarily withhold approval for excess property requests pending correction of the deficiency by the State Coordinator or LEA.
  - (2) Wholly or partly suspend or terminate the current MOA for the State Coordinator or LEA.
  - (3) Withhold further agreements for the program, or
  - (4) Take other remedies that may be legally available.

#### **STATE COORDINATOR SHALL:**

- a. Receive applications for participation in this program from its law enforcement activities and validate their law enforcement mission prior to forwarding to DLA for approval as an authorized LEA.
- b. Forward requests for excess property that are necessary to meet requirements for LEA law enforcement efforts. Assure the recipient LEA is identified on all requisitions.
- c. Be responsible for the allocation of property to qualified LEAs. Assure the LEAs agree to maintain, at no expense to the U.S. Government, adequate liability and property damage insurance coverage and workmen's compensation insurance to cover any claims.
- d. Control and maintain accurate records on all property obtained under this MOA.
- e. Enter into agreements with LEAs to assure they fully comply with the terms, conditions and limitations applicable to property transferred pursuant to this agreement.
- f. Allow a maximum of two (2) screeners per LEA to physically screen at any DRMO (one primary and one alternate). The screeners must be named in a "letter of authorization" provided to the cognizant LESO, to be updated annually, or as changes occur.
- g. Identify to LEAs property requiring demilitarization and the special controls on MLI/CCL, and FSCAP.

- h. Assure that all environmentally regulated property is disposed of in accordance with applicable Federal, State and local environmental laws and regulations.
- i. Assure that all weapons are registered with the U.S. Treasury Department's Bureau of Alcohol, Tobacco and Firearms and the U.S. Army Tank Automotive and Armaments Command. Recipients must comply with all applicable firearms laws and regulations.
- j. Identify to DLA the requisitions indicating that the transferred property will be used in the counter-drug or counter-terrorism activities of the receipt agency.
- k. State Coordinators are responsible for obtaining audits in accordance with the Single Audit Act of 1984, as amended. (31 U.S.C. 7501-7).

## NOTICES:

Any notices, communications or correspondence related to this agreement shall be provided by the United States Postal Service, express service or facsimile to the cognizant DLA office. DLA may, from time to time, propose modifications or amendments to the provisions of this MOA. In such cases, reasonable opportunity will, insofar as practicable, be afforded the State Coordinator to conform to changes affecting their operations.

## TERMINATION:

This MOA may be terminated by either party, provided the other party receives thirty-days (30) notice, or as otherwise stipulated by Public Law.

IN WITNESS THEREOF, the parties hereto have executed this agreement as of the last date written below.

(s) \_\_\_\_\_  
PATTY S. BARBOUR, COL, USA  
Chief, Dispositions Management Agency  
HQ Defense Logistics Agency

(s) \_\_\_\_\_  
DAVID H. GRAHAM  
State Coordinator

Date (Dated 6/11/01)

Date (Dated March 19, 2001)